

APPENDIX 10 - PUBLIC WAY ACCESS PERMITS

Town of Framingham By-Laws, Article VI. "Roads, Highway, Bridges, Rubbish Disposal, Water and Sewer" Section 8 Public Way Access Permits

[Adopted: Article 17, Special Town Meeting of December 11, 1996]

[APPROVED BY ATTORNEY GENERAL]

A. Purpose.

It is the purpose of this By-Law to provide for the review of Public Way Access Permit applications and to establish procedures for the predictable, timely, and uniform review of such applications so as to ensure public safety. These procedures apply to Public Way Access Permit applications for: (1) a new access to a public way; (2) physical modifications to an existing access to a public way; (3) use of a new or an existing access that generates a substantial increase in or impact on traffic on a public way.

B. Definitions.

In this By-Law, the following terms shall have the meanings prescribed below:

- (a) "Modification" shall mean any alteration of the physical or traffic operational features of the access.
- (b) "Substantial" increase in or impact on traffic shall mean that generated by a facility or land use served by an access which meets or exceeds any of the following thresholds; (i) Residential, including hotels, motels, lodging houses and dormitories: any increase to the existing certificate of occupancy of more than 25 persons; (ii) Residential (including subdivisions): 50 vehicular trips per day as defined in the ITE Trip Generation Manual, 5th Ed. In the case of subdivisions of land the estimated trip generation for each lot in the subdivision shall be combined in determining whether or not the thresholds set forth in this paragraph have been met; (iii) Nonresidential: 250 vehicular trips per day as defined in said Manual; (iv) Nonresidential: 25 new parking spaces; (v) Nonresidential: 5,000 new square feet. (c) "Public way" shall mean all roadways other than state numbered highways as defined in MGL Chapter 81 section 21.

C. Submittal of Permit Application

The Director of Public Works or the Planning Board shall be responsible for the review of a Public Way Access Permit application according to the following criteria:

- (1) Applicants whose proposed action would not otherwise require statutory notice of a public hearing by the Planning Board under the provisions of any applicable Zoning By-Law, General By-Laws, or Rules and Regulations shall submit a request for a Public Way Access Permit to the Director of Public Works.
- (2) Applicants whose proposed action would otherwise require statutory notice of a public hearing by the Planning Board under the provisions of any applicable Zoning By-Law, General By-Laws, or Rules and Regulations shall submit a request for a Public Way Access Permit to the Planning Board.

A permit applicant shall request issuance of a permit on a standard form supplied by the appropriate Board/Department. A permit application shall be deemed complete only after the following items have been submitted: (1) standard application form; (2) evidence of compliance with the Massachusetts Environmental Policy Act by the Executive Office of Environmental Affairs of the Commonwealth, if determined to be necessary; (3) engineering plans acceptable to the Board/Department, where required by the Board or Department. The Board/Department, by regulation, may adopt a schedule of reasonable fees to accompany said application.

D. Procedures of the Director of Public Works

- (1) Application for a Public Way Access Permit shall be made to the Director of Public Works. Where an application is deemed complete, including certification of notification to immediate abutters, the Director shall review said application with respect to safety or appropriateness of the proposed access and, except when the proposed access would result in generating a substantial increase in or impact on traffic as defined in Subsection B, shall render a decision within 30 working days by filing same with the Town Clerk.
- (2) Where the Director of Public Works denies said application, he/she shall state specific findings for the denial in the decision.
- (3) Any person who is aggrieved by the decision of the Director of Public Works may file an appeal with the Town Clerk within 21 days of the date of decision. The Board of Selectmen shall hold a public hearing on the appeal according to the procedure indicated in Subsection H.

(4) Where an application for a Public Way Access Permit is for an access that would result in generating a substantial increase in or impact on traffic as defined in Subsection B, the Director shall review said application with respect to the safety or appropriateness of the proposed access and make a recommendation to the Board of Selectmen within 30 working days. The Board of Selectmen shall hold a public hearing according to the procedure indicated in Subsection H.

E. Procedures of the Planning Board.

(1) The Planning Board shall advertise and hold a public hearing on an application for a Public Way Access Permit, when deemed complete, concurrent with any public hearing required for the proposed project in accordance with any applicable Zoning By-Law, General By-Laws, or Rules and Regulations. Review and comment regarding the safety or appropriateness of the proposed access may be made by any department or consultant submitting a report to the Planning Board.

(2) Following the close of the public hearing, the Planning Board shall make a decision on the Public Way Access Permit application in accordance with the timetable for its decision on the proposed project under any other applicable Zoning By-Law, General By-Laws, or Rules and Regulations and filing same with the Town Clerk.

(3) Where the Planning Board denies said application, it shall state specific findings for its denial in its decision.

F. Powers of the Director of Public Works, the Planning Board, and the Board of Selectmen

(1) The Director of Public Works or the Planning Board or the Board of Selectmen, in accordance with procedures described herein, may deny the issuance of a Public Way Access Permit due to the failure of the applicant to provide sufficient roadway improvements to facilitate safe and efficient roadway operations, or when the construction and/or use of the access applied for would create a condition that is unsafe or endangers the public safety and welfare.

(2) The Director of Public Works or the Planning Board or the Board of Selectmen, in accordance with procedures described herein, may, in the alternative, impose conditions upon a Public Works Access Permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the Permit. Such conditions may include, but not be limited to: (a) necessary limitations on turning movements; (b) restrictions on the number of access points to serve the parcel; (c) vehicle trip reduction techniques; (d) necessary and reasonable efforts to maintain existing levels of service; (e) design and construction of necessary public way improvements by the permittee; (f) reimbursement by the permittee of costs to town inspection of public way improvement work.

(3) Variance. Where site or access conditions do not allow the proposed access to meet the permit or design standards normally applicable under this By-Law, the Director of Public Works or the Planning Board or the Board of Selectmen, in accordance with procedures described herein, may vary application of the design standards on a case by case basis, upon the finding that: (a) for either a private applicant or a governmental entity, there are no reasonable available alternatives which would allow access in compliance with these standards, in which case the applicant must commit to provide measures to mitigate impacts to traffic and operational safety which the Director of Public Works or the Planning Board or the Board of Selectmen determines are necessary, or (b) as an alternative procedure for a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional, or state public interest, including the avoidance or minimization of environmental impacts.

G. Access Permit Provisions

(1) Construction under the terms of a Public Way Access Permit shall be completed within two years of the date of issue, unless otherwise stated in the Permit. The Director of Public Works or the Planning Board or the Board of Selectmen may extend the Permit for an additional year, at the written request of the permittee, filed prior to the expiration of the original construction period.

(2) If the Director of Public Works or the Planning Board or the Board of Selectmen determines that a Public Way Access Permit condition has not been complied with, the Director/Board may suspend or revoke the Permit if, after notice to the permittee of the alleged noncompliance, seventy-two (72) hours have elapsed without compliance.

(3) The Director of Public Works or the Planning Board or the Board of Selectmen may require a performance bond to be posted by the permittee in an amount not to exceed the estimated cost of the work or \$50,000.00, whichever is lesser. The performance bond shall be posted prior to the issuance of the permit.

(4) The Director of Public Works or the Planning Board or the Board of Selectmen may issue written orders or regulations to carry out or enforce the provisions of this By-Law.

H. Appeal to the Selectmen

The Board of Selectmen shall hold a public hearing on (1) any appeal by an aggrieved party from a decision of the Director of Public Works, within 30 working days of the date the appeal was filed with the Town Clerk, and (2) any recommendation made by the Director of Public Works pertaining to a proposed access that would result in generating a substantial increase in or impact on traffic, within 30 working days of the date the recommendation was made. Notification of the public hearing shall be in accordance with the procedures and timetable set forth in Section V. L. of the Zoning By-Law. The decision of the Board of Selectmen shall be rendered within 21 working days of the close of the public hearing. A majority vote of the members of the Board of Selectmen shall be required to render a final decision. In rendering its decision, the Board of Selectmen shall consider, in accordance with this By-Law, the safety or appropriateness of the proposed access. The Board of Selectmen may then decide to affirm, modify, or rescind the decision/recommendation of the Director of Public Works by filing same with the Town Clerk.